

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GC Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**REPLY COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.**

Texas Statewide Telephone Cooperative, Inc. (TSTCI) submits these Reply Comments regarding proposals to reform the universal service fund (USF) and intercarrier compensation (ICC) system described in the Commission's Further Inquiry.¹ TSTCI is an organization representing 39 small, rural incumbent local exchange companies and cooperatives in Texas, all operating under rate-of-return regulation. (See Attachment 1.)

¹ See, Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51; DA 11-1348, Released August 3, 2011 (the "*Further Inquiry*").

Proposal to Preempt State Authority Should be Rejected

In its previous comments TSTCI expressed concerns regarding the preemption of state authority over intrastate access rates and carrier of last resort (“COLR”) obligations as described in the ABC Plan. Many other parties filing comments expressed these same concerns, citing the ABC Plan’s disregard for statutory rights given to the states regarding the regulation and interconnection of intrastate services.² For example, the Nebraska Public Service Commission (NPSC) states, “In developing the legal framework for reform, the ABC Plan proponents ignore the plain language of the Telecommunications Act of 1996 which expressly reserves state jurisdiction over intrastate rates, terms, and conditions of service....The ABC Plan proponents claim that the Commission has the authority under §§ 201(b) and 251(b)(5) to set uniform rates for all traffic....While the Commission may use its § 201(b) authority to carry out the provision of the Act, it is clearly recognized that § 201(b) does not extend to intrastate traffic where Congress has expressly reserved such authority to the states.”³

Other commenters were equally opposed to the ABC Plan’s proposed preemption of state jurisdiction over COLR obligations for telecommunications carriers, arguing there is no foundation for such an action when it is clearly within the purview of the state to ensure that all citizens have access to basic, intrastate services.⁴ The states are best positioned to determine where the communications services needs are in the state and where those needs are not being met.

² See comments of Nebraska Public Service Commission, Iowa Utilities Board, Virginia State Corporation Commission Staff, South Dakota Public Utilities Commission, Public Service Commission of District of Columbia, Tennessee Regulatory Authority, Washington Utilities and Transportation Commission, California Public Utility Commission, National Association of Regulatory Utility Commissioners (NARUC) , Nebraska Rural Independent Companies, Maine Public Utilities Commission, Vermont Public Service Board, Vermont Department of Public Services; Rural Broadband Alliance.

³ See, Comments of Nebraska Public Service Commission, pp. 6- .7

⁴ Id., p. 5; South Dakota Public Utilities Commission, p. 5; Maine Public Utilities Commission, Vermont Public Service Board, Vermont Department of Public Services, p. 16

TSTCI does not see a need to reiterate the legal arguments in support or opposition of preemption. Arguments regarding the legality of an action are usually settled in one way – through the courts. NARUC correctly concludes that adoption of the ABC Plan “presents a target-rich environment of appealable issues, including record deficits, due process concerns, and specious legal theories – several requiring the FCC to ignore common sense, actual facts and prior Court/Commission precedent.” The public interest would be better served by the Commission and state regulatory entities working jointly to advance any necessary reform instead of through a preemptive approach as proposed in the ABC Plan. The preemptive approach will only result in expensive litigation and further delays in the implementation of any needed reform and broadband deployment by many providers.

As TSTCI noted previously, the Commission and the states have been working jointly to exercise their dual jurisdiction over telecommunications for many years. Many of the regulatory agencies opposed to preemptive action by the Commission are urging continued cooperation and collaboration between the Commission and the states.⁵ For instance, the Louisiana Public Service Commission recommends the Commission establish consistent guidelines that state regulators can tailor to their particular state needs without disrupting existing state USF mechanisms.⁶ The Maine and Vermont regulatory agencies also advocate cooperative efforts, suggesting that the Commission and states work together to create a single access rate for each carrier that applies to both interstate and intrastate access traffic, as was recommended by the state members of the Joint Board.⁷

⁵ See Comments of Maine PUC, Vermont Public Service Board, Vermont Department of Public Services, p.2; Comments of Louisiana Public Service Commission, p. 6; NARUC, p. 5.

⁶ Comments of Louisiana Public Service Commission, p. 6

⁷ See Comments of Maine PUC, Vermont Public Service Board, Vermont Department of Public Services, p.17.

TSTCI believes that exercising preemption to implement broad reform may undermine state universal service support mechanisms and ignores the level of expertise the states have regarding the carriers and services provided within their state, and their ability to make adjustments to respond to local changes and needs. Exercising preemption will also fuel litigation which will hamper broadband deployment and delay ICC and USF reform.

Changes to Universal Service Fund Mechanisms Must Not Violate Universal Service Policy Objectives

As TSTCI and other commenters have noted, the ABC Plan proposes a wholly inadequate broadband standard of 4 Mbps downstream and 768 kbps upstream for rural areas, as well as unreliable “alternative technology” satellite service for the most rural, highest-cost areas as proposed in an “Advanced Mobility/Satellite Fund.”⁸ The broadband standard is far inferior to the well-cited and publicized “100 megs to 100 million homes” goal set by the Administration and as explained in the Nebraska Rural Independent Companies’ (Nebraska Companies’) comments, satellite technology, whether used to provide broadband service or voice service is inferior to wireline technology and much more unreliable, an important concern when emergency communications are required.⁹

Although the ABC Plan is geared to price cap companies, TSTCI agrees with the Nebraska Companies’ belief that Commission decisions on satellite technology and broadband standards will eventually apply to the rural areas of rate-or-return companies, where the effects will be most severe because of the large percentage of their customers that live in high-cost areas.¹⁰ Instead of rural citizens receiving services that are reasonably comparable to service

⁸ Comments of the Rural Broadband Alliance, Comments of the Nebraska Rural Independent Companies

⁹ Comments of the Nebraska Rural Independent Companies, p. 48.

¹⁰ Id., p. 54.

available in urban areas, customers in high-cost areas will be subject to second-rate service.

Because these proposals do not bring rural customers services that are reasonably comparable to the services provided to urban customers, these proposals would violate the legal requirements of the universal service statutory provisions of Sec. 254(b) of the Telecommunications Act and should be rejected.

Originating Access Reform Should be Part of Comprehensive ICC Reform

The ABC Plan caps interstate and intrastate originating access rates at current levels and does not call for reductions in originating access charges. The authors of this plan caution that if the Commission were to mandate such reductions, support for “the carefully-negotiated compromise” would be undermined. Also, rate rebalancing through end-user rate increases and additional recovery from the transitional access replacement mechanism would have to be addressed – “and adding funding requirements to the access replacement mechanism would threaten the USF budget at this time.”¹¹ The Rural Associations¹² explain how their original RLEC plan proposed that both terminating and originating intrastate access rates would be brought into parity with interstate rates; however, the new Consensus Framework proposes that only terminating switched access rates are to be reduced. Although the priority was established to reduce terminating access rates as part of the Consensus Framework, the Rural Associations make clear that reform of originating access rates is important and cannot be delayed indefinitely.¹³ TSTCI agrees that originating access reform must be addressed as part of

¹¹ Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon, and Windstream, (Price Cap ILECs) pp. 26-27.

¹² Comments of the National Exchange Carrier Association, Inc. (NECA); National Telecommunications Cooperative Association (NTCA); Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO); and the Western Telecommunications Alliance (WTA); (Rural Associations), p. 38.

¹³ Rural Associations, p. 40.

comprehensive ICC reform— and sooner is far better than later. As noted by the Nebraska Companies, originating access revenues still represent a significant share of cost recovery for many rural carriers and originating access revenues as well as toll services revenues are at risk as current trends will likely accelerate under the ABC Plan.¹⁴ Reducing terminating access rates while leaving originating access rates at higher levels creates incentives for interexchange carriers to increase their wholesale toll rates and bypass the PSTN to avoid originating switched access charges. The Rural Associations acknowledge this concern by urging the Commission to promptly examine originating access reform and monitor the wholesale toll market to ensure imbalanced rate structure between originating and terminating access rates does not result in adverse consequences, once a decision is made regarding the proposed Consensus Framework.¹⁵

TSTCI agrees with the, Nebraska Companies, Price Cap ILECs, and other commenters who oppose a flat-rate per-customer charge on the ILEC's presubscribed long distance affiliate as a means to recover reductions in originating access rates.¹⁶ As the Price Cap ILECs describe, such a charge replicates “a failed late-1990s regulatory experiment known as the ‘Presubscribed Interexchange Carrier Charge’ (PICC). . . . The Commission eliminated PICCs three years later, in the Calls Order, after concluding that they had “created market inefficiencies.” The Nebraska Companies explain that such a charge would amount to approximately \$10 per month per customer for the Nebraska Companies, which would put them at a severe competitive disadvantage. Also, not every ILEC has a long-distance affiliate, so this proposal is impractical.¹⁷ Originating access charges are still billed to many non-affiliated interexchange carriers, not just the ILEC's long distance affiliate. Originating per-minute access charges are

¹⁴ Nebraska Companies, p. 70.

¹⁵ Rural Associations, p. 41.

¹⁶ Nebraska Companies, p 71; Price Cap ILECs, p 27.

¹⁷ Nebraska Companies, p. 71

still appropriate for the use of the rural companies' networks by third parties and revenue reductions should be recovered in the same manner as terminating rate reductions.

Conclusion

TSTCI appreciates the monumental task the Commission is undertaking as it sorts through the many proposals and conflicting interests to reform the universal service and ICC mechanisms. Regardless of any proposals that encourage preemption of state authority, TSTCI believes the public interest and statutory mandates require the Commission to work in partnership with the states, particularly in regard to reform of intrastate access rates and COLR obligations. Preemption of state authority must be rejected. As demonstrated by the many commenters citing the ABC Plan's disregard for the states' statutory rights, to do otherwise will only result in endless litigation that will delay ICC and USF reform and hamper broadband deployment.

TSTCI, along with other commenters, also urges the Commission to reject the ABC Plan's proposed broadband standard of 4 Mbps/768 kbps in rural areas and the alternative Advanced Mobility/Satellite Fund for satellite technology for the most rural, highest-cost areas. These proposals do not bring rural customers services that are reasonably comparable to the services provided to urban customers and therefore violate the legal requirements of universal service principles in Sec. 254(b) of the Telecommunications Act.

Originating access rates must be a part of comprehensive ICC reform. Reducing terminating access rates while leaving originating access rates at higher levels creates incentives for interexchange carriers to increase wholesale toll rates and bypass the PSTN altogether to avoid originating switched access charges. Recovery of originating access reductions must be

through similar provisions made for recovery of terminating access rate reductions. A flat-rate per-customer charge on the ILEC's presubscribed long distance affiliate will impose severe competitive disadvantages on many companies. Originating per-minute access charges are still appropriate for the use of the rural companies' networks by third parties.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cammie Hughes".

Texas Statewide Telephone Cooperative, Inc.

BY: Cammie Hughes

Authorized Representative

5929 Balcones Drive, Suite 200

Austin, Texas 78731

512-343-2587

September 6, 2011

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazoria Telephone Company
Brazos Telecommunications, Inc.
Brazos Telephone Cooperative, Inc.
Cameron Telephone Company
Cap Rock Telephone Cooperative, Inc.
Central Texas Telephone Cooperative, Inc.
Coleman County Telephone Cooperative, Inc.
Colorado Valley Telephone Cooperative, Inc.
Community Telephone Company, Inc.
Cumby Telephone Cooperative, Inc.
Dell Telephone Cooperative, Inc.
E.N.M.R. Telephone Cooperative, Inc.
Eastex Telephone Cooperative, Inc.
Electra Telephone Company
Etex Telephone Cooperative, Inc.
Five Area Telephone Cooperative, Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Cooperative, Inc.
Nortex Communications, Inc.
Panhandle Telephone Cooperative, Inc.
Peoples Telephone Cooperative, Inc.
Poka Lambro Telephone Cooperative, Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Cooperative, Inc.
South Plains Telephone Cooperative, Inc.
Tatum Telephone Company
Taylor Telephone Cooperative, Inc.
Wes-Tex Telephone Cooperative, Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Cooperative, Inc.
XIT Rural Telephone Cooperative, Inc.